

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JAMES RUFF,

Plaintiff,

Case Number 07-15443-BC
Honorable Thomas L. Ludington

v.

CORRECTIONAL MEDICAL SERVICES,
PAUL PIPER, SEETHA VADLAMUDI,
JOHN DOE,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION DATED JANUARY 7, 2009,
OVERRULING PLAINTIFF'S OBJECTIONS, GRANTING DEFENDANT
CORRECTIONAL MEDICAL SERVICES' MOTION FOR SUMMARY JUDGMENT,
GRANTING DEFENDANT VADLAMUDI'S MOTION FOR SUMMARY JUDGMENT,
ADOPTING REPORT AND RECOMMENDATION DATED APRIL 7, 2009, GRANTING
DEFENDANT PIPER'S MOTION FOR SUMMARY JUDGMENT, DISMISSING
CLAIMS AGAINST DEFENDANTS CORRECTIONAL MEDICAL SERVICES,
VADLAMUDI, AND PIPER WITH PREJUDICE, DISMISSING CLAIMS AGAINST
JOHN DOE WITHOUT PREJUDICE, AND AMENDING ORDER DATED JUNE 4, 2008**

This matter is before the Court on two report and recommendations issued by Magistrate Judge Charles E. Binder on January 7, 2009, and April 7, 2009. In the earlier issued report and recommendation, the magistrate judge recommends granting the summary judgment motions of Defendants Correctional Medical Services ("CMS") and Seetha Vadlamudi. In the later issued report and recommendation, the magistrate judge recommends granting the summary judgment motion of Defendant Paul Piper. In both report and recommendations, the magistrate judge concludes that Plaintiff James Ruff cannot prove that the respective Defendants were deliberately indifferent to any of Plaintiff's serious medical needs, so as to violate his rights pursuant to 42 U.S.C. § 1983 and the Eighth Amendment.

While Plaintiff filed an objection to the first report and recommendation, he has not filed any objections to the second. The failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Thus, the Court will adopt the April 7, 2009, report and recommendation of the magistrate judge, and will grant Defendant Piper's motion for summary judgment.

In contrast, Plaintiff has filed an objection to the report and recommendation in which the magistrate judge recommends granting Defendants CMS's and Vadlamudi's motions for summary judgment. Significantly, however, Plaintiff does not specifically contend that there are any errors in the magistrate judge's report and recommendation. Rather, Plaintiff repeats general, conclusory allegations that Defendants acted with deliberate indifference to his medical needs. Plaintiff has not raised any objections that are material to the analysis of his claims. Thus, the Court will adopt the January 7, 2009, report and recommendation of the magistrate judge, and will grant Defendant CMS's and Defendant Vadlamudi's motions for summary judgment.

Additionally, the Court notes that the only remaining Defendant is "John Doe." At this juncture, Plaintiff has not identified any other defendants and no claims remain against named Defendants. Thus, the Court will dismiss Plaintiff's claims against "John Doe" without prejudice. *See generally Haddad v. Fromson*, 154 F. Supp. 2d 1085, 1093 (W.D. Mich. 2001); *Adams v. Hyman Lippitt, P.C.*, No. 05-72171, 2007 WL 2571955, at *1 (E.D. Mich. Sept. 5, 2007).

Finally, an issue implicated by the Court's order [Dkt. # 9] dated June 4, 2008, should be addressed before the entry of a judgment in this case. In that order, pursuant to a report and

recommendation of the magistrate judge, the Court dismissed claims against the Michigan Department of Corrections (“MDOC”) based on sovereign immunity. While the order indicated that the claims were dismissed with prejudice, the order should have indicated that they were dismissed without prejudice. In the Sixth Circuit, sovereign immunity is treated like the defense of lack of personal jurisdiction. *Ku v. State of Tennessee*, 322 F.3d 431, 435 (6th Cir. 2003) (determining that “the immunity defense in cases otherwise falling within a federal court’s original jurisdiction should be treated like the defense of lack of personal jurisdiction”). While a court may have discretion to reach the merits of a plaintiff’s claims and enter judgment in favor of the State before addressing the issue of sovereign immunity, *Nair v. Oakland Cmty. Mental Health Auth.*, 443 F.3d 469, 477 (6th Cir. 2006), in this case, the Court did not reach the merits of Plaintiff’s claims against MDOC. Thus, the Court will amend its previous order to reflect that Plaintiff’s claims against MDOC are dismissed without prejudice.

Accordingly, it is **ORDERED** that the magistrate judge’s report and recommendation [Dkt # 32] is **ADOPTED**.

It is further **ORDERED** that Plaintiff’s objection [Dkt. # 33] is **OVERRULED**.

It is further **ORDERED** that Defendant Correctional Medical Services’ motion for summary judgment [Dkt. # 16] is **GRANTED**.

It is further **ORDERED** that Defendant Seetha Vadlamudi’s motion for summary judgment [Dkt. # 22] is **GRANTED**.

It is further **ORDERED** that the magistrate judge’s report and recommendation [Dkt. # 35] is **ADOPTED**.

It is further **ORDERED** that Defendant Paul Piper’s motion for summary judgment [Dkt.

31] is **GRANTED**.

It is further **ORDERED** that Plaintiff's claims against Defendants Correctional Medical Services, Vadlamudi, and Piper are **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that Plaintiff's claims against "John Doe" are **DISMISSED WITHOUT PREJUDICE**.

It is further **ORDERED** that the Court's order [Dkt. # 9] is **AMENDED**. The final sentence of the order, which provides:

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [dkt #5] is **ADOPTED**, that Plaintiff's objections [dkt #6] are **OVERRULED**, and that Defendants MDOC and Nobles are **DISMISSED WITH PREJUDICE**,

is amended to state:

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [dkt #5] is **ADOPTED**, that Plaintiff's objections [dkt #6] are **OVERRULED**, that Defendant Nobles is **DISMISSED WITH PREJUDICE**, and that Defendant MDOC is **DISMISSED WITHOUT PREJUDICE**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: May 13, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on May 13, 2009.

s/Tracy A. Jacobs
TRACY A. JACOBS